

ENACTED AND PENDING CALIFORNIA LEGISLATION of interest to banks, as of July 30, 2003

Enacted legislation

A.B. 690 (Pacheco), as amended June 30, 2003. *Enacted* July 24, 2003, as **chapter 110**

Amends Code of Civil Procedure 488.455 and 700.140 to allow (but not require) a financial institution to designate a centralized location to receive notices of levy on deposit accounts.

A.B. 1092 (Harmon), as amended June 30, 2003. *Enacted* July 24 2003, as **chapter 116**

Amends Civil Code 1749.5, adds Civil Code 1749.45, and amends CCP 1520.5 to prohibit the sale of any gift certificate (including most gift cards, but not certain cards that may be used with multiple sellers of goods or services) that contain a service fee. The bill does not prevent the issuer of a gift certificate from providing on the certificate that the purchaser is entitled to a full refund of the amount paid under specified circumstances.

A.B. 1105 (Jackson), as amended May 13, 2003. *Enacted* July 21, 2003, as **chapter 73**

Amends Penal Code 803 to run the statute of limitations for identity theft from the time of discovery of the offense.

AB. 1610 (Pavley), as amended April 29m 2003. *Enacted* July 7, 2003, as **chapter 41**

Amends Civil Code 1785.20.3 to require a consumer credit report user to take to take reasonable steps to verify the information contained on an application if the user discovers that the consumer's name, address, or social security number on the application do not match the corresponding information in the consumer credit report.

A.B. 1772, introduced March 13, 2003. *Enacted* July 22, 2003, as **chapter 90**

Amends Penal Code 530.8 on identity theft.

S.B. 134 (Figueroa), as amended June 19, 2003. *Enacted* July 14, 2003, as **chapter 54**

Amends Civil Code 3097 and adds Civil Code 3259.5 to require the owner of a private work of improvement to notify by certified or registered mail (or by first class mail with

certificate of mailing) the original contractor, and any claimant who has provided a preliminary 20-day notice prior to recording a mechanics lien or stop notice, that a notice of completion or a notice of cessation has been recorded within 10 days. Exclude from "owner" a person who occupies real property as a personal residence. Sole liability for failure to give notice is extending the period of time for contractors or claimants to file mechanic's liens or stop notices to 90 days.

Also requires specified language in preliminary 20-day notices.

S.B. 455 (Torlakson), as amended April 22, 2003. *Enacted* July 21, 2003, as **chapter 74**

Amends Civil Code 1697.7 and 1697.8 re home equity sales contracts. The bill increases the maximum fine against equity purchasers from \$10,000 to \$25,000, and authorizes a court to award a civil penalty or not more than \$2,500 (in addition to actual damages) to a prevailing equity seller, if the court has not awarded exemplary damages.

S.B. 804 (Machado), as amended June 4, 2003. *Enacted* July 14, 2003, as **chapter 64**

Amends Code of Civil Procedure 704.730 to increase from \$125,000 to \$150,000 the homestead exemption if a judgment debtor or spouse is at the time of sale 65 years of age or older, or disabled, or 55 or older and with a gross income below \$15,000 (or if married, \$20,000).

A reminder

The **California Data Security Disclosure Law** (Civil Code 1798.82), passed in 1992, become effective July 1, 2003. For more details, see Manatt Phelps newsletter, volume III Issue 8.

Pending legislation

A.B. 73 (Lowenthal), as amended May 8, 2003. *Passed Assembly (64-8) on May 19, 2003.* With Senate Judiciary. Hearing cancelled at author's request, July 1, 2003.

Would add Financial Code 4003 to prohibit a charge card issuer, financial institution, or other lender from soliciting consumer loans or credit by sending unsolicited checks to consumers who reside in California, unless the consumer is provided a mechanism that allows him or her to elect not to receive the checks.

A.B. 95 (Corbett), as amended May 12, 2003. *Passed Assembly* (41-35) on June 5, 2003. With Senate Judiciary. To third reading, July 15, 2003.

Would add B&PC 17204.7 and 17204.8 to require any person who files a private action under B&PC 17,200 on behalf of the general public to serve a specified notice on each defendant. The bill would also set forth principles of joining of defendants, and would specify that the various provisions in the bill are not severable. The bill would take effect only if SB 122 is also enacted and becomes effective prior to January 1, 2004.

A.B. 169 (Chavez), as amended June 9, 2003. *Enrolled* and to governor. July 21, 2003.

Would add Financial Code 22062 to exempt from the California Finance Lenders Law commercial bridge loans by venture capital companies to operating companies

A.B. 196 (Leno), as amended June 9, 2003. *Passed Assembly* (42-34) on April 21, 2003. *Passed Senate*, July 24, 2003. To Assembly.

Bill is intended to address gender stereotyping. It would amend Government Code 12926 and 12949, which prohibits discrimination and harassment on the basis of sex, etc., by including gender in the definition of sex. Employers would be permitted to require employees to comply with reasonable workplace appearance, grooming, and dress standards (consistent with state and federal law), if employees are allowed to appear or dress consistently with their gender identity.

A.B. 226 (Vargas), as amended June 30, 2003. *Passed Assembly* (49-28) on May 19, 2003. *Passed Senate*, July 24, 2003. To Assembly.

Would amend Insurance Code 10110.1 and add I.C. 10110.4 to prohibit an insurance company from issuing to any California employer a life insurance policy designating the employer as beneficiary and insuring the life of a California resident who is the employee's current or former nonexempt employee and who meets certain other criteria. Policies issued prior to the effective date of the bill insuring the lives of nonexempt employees could remain in effect until the next premium payment date on or after 5 years from the effective date of the bill (but in no event later than January 1, 2010), unless they fall within a specified exemption.

AB. 274 (Koretz), as amended July 14, 2003. *Passed Assembly* (45-32) on May 23, 2003. With Senate Judiciary. To third reading, July 14, 2003.

Would add Labor Code 1182.9 to create a rebuttable presumption that any adverse employment action taken within 60 days after an employee exercises any employment right is retaliatory, absent clear and convincing evidence that the employee made up the

claim to prevent the employer from taking adverse employment action. Presumption would not apply to the criminal penalty for retaliation in Labor Code 98.6(b) or to a discharge on completion of short-term employment.

A.B. 309 (Chu), as amended July 15, 2003. *Passed Assembly* (49-30) on May 19, 2003. With Senate Judiciary. To third reading, July 16, 2003.

Would amend Civil Code 1632 to require, effective July 1, 2004, that any person engaged in a trade or business who negotiates specified contracts primarily in Chinese, Tagalog, Vietnamese, or Korean (as well as Spanish) deliver a translation of the contract before execution. The bill would incorporate additional changes to CC 1632 proposed by S.B. 46, to become operative only if both S.B. 46 and A.B. 309 are both chaptered and effective by January 1, 2004, and A.B. 309 is chaptered last.

A.B. 313 (Dutra), as amended July 16, 2003. *Passed Assembly* (73-0) on April 24, 2003. With Senate Appropriations. Hearing scheduled August 18, 2003.

Would amend Civil Code 2948.5 and Financial Code 50204 to provide that a borrower under a note secured by a mortgage or deed of trust on 1-to-4 residential units is not required to pay interest for more than 1 day prior to date loan proceeds are disbursed out of escrow or to or on behalf of the borrower.

Would also repeal FC 50707 (which sunsets the California Residential Mortgage Lending Act as of June 30, 2005), thereby making that law, which licenses and regulates mortgage lenders, permanent.

A.B. 418 (Pacheco), as amended July 8, 2003. *Enrolled* and to governor, July 16, 2003.

Would amend Code of Civil Procedure 415.20 and add CCP 415.95 on delivery of process. Among other provisions, if the form of a business organization is unknown, and if it is not a corporation with a registered agent for service of process listed with the Secretary of State, delivery could be to a person apparently in charge.

A.B. 578 (Leno), as amended July 3, 2003, *Passed Assembly*, July 7 2003. With Senate Judiciary. Hearing scheduled August 19, 2003.

Would enact (as an emergency statute, effective on passage) the Electronic Recording Delivery System Act by adding Government Code 27362 and 27390 et seq (and repealing Government Code 27279.4 and 2739.8) to allow county recorders to develop electronic recording systems, and to charge up to \$1 more per document for any document filed electronically. It would authorize specified counties to participate in an electronic

recording pilot project until January 1, 2011, with the Attorney General evaluating any such pilots and reporting to the legislature by June 30, 2007.

A.B. 679 (Chavez), as amended July 1, 2003. *Passed Assembly* (74-0) on May 22, 2003. *Passed Senate*, July 24, 2003. To Assembly.

Would add Business & Professions Code 10237 et al (and repeal B&PC 10229) to amend requirements for offering to sell a series of notes secured directly by interests in one or more parcels of real property, or offering to sell undivided interests in a note so secured.

A.B. 763 (Liu), as amended July 3, 2003. *Passed Assembly* (79-1), June 3, 2003. *Passed Senate* (25-0), July 21, 2003. In Assembly.

Would amend Civil Code 1798.85 to prohibit mailing social security numbers (or portions thereof) on postcards or other mailers or visible on or through envelopes.

A.B. 800 (Kehoe), as amended May 7, 2003. *Passed Assembly* (76-0) on May 12, 2003. *Passed Senate* (38-0) on June 24, 2003. Held at Assembly Desk to see if amendments to the Fair Credit Reporting Act pass Congress this year.

Would amend Civil Code 1785.25 to revise the process for consumer credit reporting agencies to investigate disputed information.

A.B. 1355 (Wiggins), as amended July 7, 2003. *Passed Assembly* (73-1) on May 12, 2003. With Senate Appropriations. Hearing scheduled August 18, 2003.

Would add Financial Code 216.3 on civil money penalties against licensed banks and their subsidiaries, and make related changes to other statutes (amend FC 273, 506, 645, 646, 687, 688, 1547, 1780, 1938, 3359, 3369, 3376, 14256, 16201, and 16901, and repeal FC 14210).

A.B. 1705, as amended June 26, 2003. *Passed Assembly* (47-28) on May 15, 2003. With Senate Judiciary. To third reading, July 3, 2003.

Would add Probate Code 16004.5 to prohibit a trustee from requiring a beneficiary to relieve the trustee of liability as a condition for making a required distribution or payment to or for the benefit of the beneficiary. But the bill would not affect a trustee's right to take specified actions.

A.B. 1715, as amended April 28, 2003. *Passed Assembly (44-23)* on May 19, 2003. Senate Judiciary do pass (5-1), July 9, 2003. To Senate Appropriations. Hearing scheduled August 18, 2003.

Would amend Code of Civil Procedure 1281 and add Government Code 12952 on employment arbitration.

A.B. 1773, as amended May 14, 2003. *Enrolled* and to governor, July 18, 2003.

Would amend Penal Code 786, on venue for identify theft prosecutions.

A.B. 1774, as amended June 16, 2003. *Passed Assembly (63-1)* on May 22, 2003. With Senate Appropriations. Hearing scheduled August 18, 2003

Would amend Financial Code 261, 722, 1500, 1560, 1808, 1900, 3375.5, 4839, 4843, 4946, 8152, 14250, 14354, 16151, 16701, 31507, and 33903; would amend and renumber Financial Code 4879.12, 4879.13, and 4879.135; and would repeal Financial Code 8012. The bill would revise the provisions authorizing the DFI to examine banks et al. (authorizing examination of offices both instate and out-of-state), and to deliver to state or federal law enforcement agencies fingerprints of applicants for employment or for controlling persons for existing or proposed banks, etc. The bill would also revise the provisions authorizing banks and trust companies to make investments.

A.B. 1776, introduced March 18, 2003. *Passed Assembly (76-0)* on May 15, 2003. With Senate Judiciary. Hearing scheduled August 19, 2003.

Would amend Corporations Code 2105 on access to records of foreign corporations.

S.B. 25 (Bowen), as amended June 2, 2003. *Passed Senate (26-13)* on June 4, 2003. Assembly Banking & Finance do pass (10-3), July 8, 2003. With Assembly Appropriations. Hearing scheduled August 20, 2003.

Would amend Civil Code 1785.11.1, 1785.11.6, and 1985.15 to require any person who uses a consumer report in connection with the approval of credit to take reasonable steps to verify the consumer's identity. If a person has placed a security alert in his/her file requesting that identity be verified by calling a specific telephone number, the person who receives the statement with the consumer alert must call that number before lending money or the like. The provisions on security alerts would not apply to account information service companies.

Would also amend Civil Code 1798.85, on use of or posting of social security numbers.

S.B. 27 (Figueroa), as amended July 2, 2003. *Passed Senate* (26-13) on May 29, 2003. With Assembly Banking & Finance. Do pass (10-0), July 8, 2003.

Would amend Civil Code 1798.83 and 1798.84, to allow a consumer to demand a written (or email) report from any business that has disclosed the consumer's personal information to a third party for direct marketing purposes. The report would have to include a description of the sources and recipients of the information. No business could condition the sale of goods or services on the consumer's consent to disclosure of the consumer's personal information to third parties for direct marketing purposes.

Violation: Civil penalty of up to \$3,000 and reasonable attorneys fees.

S.B. 122 (Escutia), as amended July 16, 2003. *Passed Senate* (22-15) on June 4, 2003. With Assembly Judiciary. To third reading, July 17, 2003.

Would add B&PC 17204.6 to 17204.9 to require court approval of attorney's fees in most unfair competition actions brought or proposed to be brought by a private party on behalf of the general public, and would require the plaintiff to submit a copy of the complaint to the State Bar of California. Would specify certain equitable remedies applicable to all unfair competition actions, and would set forth principles for joining such actions. Bill would be contingent on AB 95 being enacted and becoming effective before January 1, 2004.

S.B. 186 (Murray), as amended July 10, 2003. *Passed Senate* (24-12) on June 2, 2003. With Assembly Appropriations. Hearing scheduled August 20, 2003.

Would add Business & Professions Code 17529 et seq. to prohibit California persons from using unsolicited commercial e-mail ads, and to prohibit non-California persons from using unsolicited commercial e-mail ads sent to any California e-mail address. Damages recoverable (by any recipient, the e-mail service provider, or the Attorney General): the lesser of \$1,000 per transmitted message (up to \$1,000,000 per incident (but only \$100 per message or \$100,000 total if the defendant was exercising due care). Attorneys fees to prevailing plaintiff. Severability clause.

S.B. 283 (Sher), as amended July 6, 2003. *Enrolled* and to governor, July 24, 2003.

Would amend Commercial Code 9102(2), 9304, 9309, 9321, 9408, and 9521, Government Code 12194, and Vehicle Code 5907, to deal with, among things, lottery winnings as accounts.

S.B. 434 (Escutia), as amended June 4, 2003. *Passed Senate (22-26)* on June 5, 2003. With Assembly Appropriations. Hearing scheduled August 20, 2003.

Would amend various provisions of the Corporations and Government Code and add Penal Code 131, dealing with investigations of possible violations of securities laws. Among other things, the bill would provide for sharing of information with agencies of other states.

S.B. 584 (Alarcon), as amended July 7, 2003. *Passed Senate (23-15)* on June 2, 2003. With Assembly Business & Professions. Hearing postponed by committee, July 9, 2003.

Would add Business & Professions Code 17531.3, Civil Code 1726 and 1727, Insurance Code 395, and Public Utilities Code 2898 and 2898.1 to require, effective January 1, 2005, any "person" who advertises a service or product in Spanish, Tagalog, Chinese, Vietnamese, or Korean to make available, upon purchase by a consumer and at the consumer's request, information in that language on the rates and terms of the product or service (and to tell the consumer of this right to request). This can be done by providing the consumer with a location or telephone number where the information may be obtained.

"Person" would include any person (other than a 501(c)(3) nonprofit) operating in the businesses of financial institution, insurance, public utility, money transferer, automobile dealer, or check cashing. Exception for small businesses. No specific remedy for violation, but it could constitute an act of unfair competition that could be prosecuted by a civil action brought by, among others, the Attorney General.

S.B. 590 (Speier), as amended July 16, 2003. *Passed Senate (24-13)* on May 12, 2003. Placed in inactive file, July 16, 2003

Would add Civil Code 1798.80.5 to prohibit a "seller" from requesting personal information from a consumer, with specified exemptions. It would also permit a seller to provide any personal information about a consumer to a third party (including an affiliated entity), only as specified. However, "seller" would not include any federally or state chartered financial institution or its parent or subsidiary.

S.B. 901 (Dunn), as amended July 15, 2003, with Senate Committee on Appropriations.

As originally introduced, would add Financial Code 60000 et seq., the California Community Reinvestment Act, to replicate the Federal Community Reinvestment Act on the state level. As now amended, the bill would only authorize DFI to charter "low-income credit unions."

S.B. 1022 (Perata), as amended July 17, 2003. *Passed Senate* (21-15) on June 4, 2003. *Passed Assembly* (53-20), July 24, 2003. To Senate.

Would add Civil Code 1812.700 and 1812.701 to require (effective July 1, 2004) third-party debt collectors who are subject to the federal Fair Credit Reporting Act to provide specific written notices to consumers, advising of rights under that law. The notice would have to be in the language principally used in the initial oral contact with the consumer.

S.J.R. 2 (Figueroa), introduced December 2, 2002, with the Committee on the Judiciary. No hearing scheduled, or other action.

Would request the U.S. Congress not to preempt any state privacy law that provides greater protection to consumers than is or will be provided by federal law.

The following bills introduced in 2003 are two-year bills; no further action is expected on any of these bills in 2003.

A.B. 3 (Calderon), as amended April 8, 2003.

Consumer Credit Reporting Agencies Act of 2004. Would amend Civil Code 1785.13(d) to require a consumer credit reporting agency to remove adverse information within 30 days (instead of 90) after the agency is prohibited from including the information.

Would amend Civil Code 1785.25 to require a tax, judgment, or civil lienholder who has furnished information to consumer credit reporting agencies to report within 30 days that a reported lien has been released, or that an incident that resulted in the reporting of adverse information has been resolved.

A.B. 70 (Wyland), as amended March 5, 2003. With Senate Public Safety. Hearing cancelled at author's request, July 1, 2003.

Would amend Penal Code 502.01 to add to the list of offenses for which a computer, etc., used in the commission of the offense would be subject to forfeiture.

A.B. 224 (Kehoe, Cohn), as amended March 24, 2003.

Would add Civil Code 1748.35 to 1748.40 to allow a retailer to electronically read a driver's license or ID, and to store the data, only for specified purposes, such as to comply with laws requiring background checks. A retailer could not sell the data, and could share it only under certain circumstances. Actual damages (minimum \$1,500) plus reasonable attorney's fees. Triple damages if willful. A retailer could not deny goods or services to a consumer who exercises his rights under the bill.

A.B. 485 (Ridley-Thomas), as amended April 21, 2003.

Would add Financial Code 4971 and 4972 to authorize any city with a population over 300,000, and any county with a population over 750,000, to adopt anti-predatory lending ordinances that go beyond state law.

Would repeal Financial Code 1916.12, which authorizes the Secretary of the Business, Transportation and Housing Agency to apply to state-regulated lenders making loans on residentially-secured property, rules equivalent to those that apply to federally-regulated financial institutions.

A.B. 707 (Correa), as amended April 29, 2003, with Committee on Appropriations. Set, second hearing. Held under submission, May 28, 2003.

Would add Education Code 51833 to require the Department of Consumer Affairs and the Superintendent of Public Instruction to develop curriculum and educational programs in personal financial management for grades 7 – 12.

A.B. 832 (Montanez), introduced February 20, 2003.

Would add Financial Code 22302.5 to prohibit a licensed lender from denying an application for a consumer loan solely on the basis of race, ethnicity, national origin, native language, or ZIP code of the applicant's residence or business. All remedies at law and equity, including an action for injunctive relief.

A.B. 1078 (Runner), as amended March 28, 2003.

As introduced, would amend Business and Professions Code 17514 on electronic sellers who solicit newspaper or magazine subscriptions. As amended, the bill would also add Civil Code 1689.4 to allow any person age 65 or older 60 calendar days to rescind any contract with a financial institution (as defined in 12 U.S.C. 1843(k)) doing business in California if the transaction has financial implications for the person.

A.B. 1175 (Koretz), introduced February 21, 2003.

Would add Civil Code 1747.08 to prohibit a credit card issuer from sending out unsolicited preprinted credit card solicitations containing the consumer's name and address or other personal information.

A.B. 1226 (Montanez), as amended April 21, 2003.

Would add declare that credit unions are full-service retail depository institutions that can and do solicit potential members from an ever-expanding base, that they accrue great benefits from doing business in California, and that they capitalization, loans-to-one0-borrower, and conflict-of-interest requirements are not as strict as those applicable to community banks. Would direct the Legislative Analyst's Office to review the feasibility of imposing a fee for funding public education, and the feasibility of other changes, on larger credit unions (state- or federally-chartered) that offer commercial loans to businesses, and that no longer require a "common bond" for the purpose of funding public education.

A.B. 1295 (Calderon), as amended April 8, 2003.

Would add Welfare & Institutions Code 15710 et seq. to establish pilot programs in Los Angeles, San Diego, and San Francisco Counties for training bank employees in recognizing and reporting known or suspected instances of financial abuse of elders and dependent adults.

A.B. 1664 (Montanez), introduced February 21, 2003.

Would add Financial Code 4200 through 4213, the Bank Customer Bill of Rights, which would apply to California state banks and to foreign (other nation) banks licensed under Financial Code 1750 et seq.

A bank could not sell private credit information about a customer to a marketing business for profit without the customer's consent; could not charge customers using the bank's ATM cards an overdraft penalty of \$30 or more without providing notice of cumulative charges; could not issue credit cards with interest rates more than 2% above the prime rate; and could not charge more than "average" on a consumer loan if the customer qualifies for a lower rate and the bank has not advised the customer of that fact.

A.B. 1713, as amended April 30, 2003.

Would amend Code of Civil Procedure 1280 and add CCP 1281.24 and 1287.1 on consumer arbitration agreements.

S.B. 69 (Oller), introduced January 17, 2003.

Would amend Civil Code 54.1 to require advance warning, and opportunity for cure, of any claim that a place of public accommodation (such as an ATM machine) does not provide full and equal access to persons with disabilities.

S.B. 342 (Florez), introduced February 19, 2003.

Would amend Business & Professions Code 17534.8 and add B&PC 17538.43 to require any sender of unsolicited e-mail to include the seller's identity, etc., and to honor any request not to send future e-mails.

S.B. 395 (Florez), as amended April 28, 2003.

As introduced, would add Financial Code 13042 to require that every ATM in California be equipped with an emergency access button for customer safety. As amended, would amend Corporations Code 2355 to make it a felony for any corporate officer, director, agent, or shareholder to destroy documents or to make or concur in the omission to make any material entry in the corporate books, with intent to defraud.

S.B. 505 (Perata), introduced February 20, 2003.

Would add Civil Code 1726, the Postmark Payment Act, that payments to financial institutions regulated by the Financial Code or to credit cards issuers regulated by Financial Code 1747 et seq. would be deemed received as of the date of the Postal Service's postmark, if the envelope is properly addressed, postage prepaid.

S.B. 691 (Escutia), as amended June 11, 2003. *Passed Senate (23-24???)* on May 15, 2003. With Assembly Insurance. Hearing cancelled at author's request, July 2, 2003.

Would add Insurance Code 676.18 to prevent an insurer from using credit ratings, credit reports, credit scoring models, or other related credit or financial information as a basis to underwrite, rate, or determine a placement in a particular payment plan for policies subject to Ins C 675.

S.B. 766 (Florez), as amended May 5, 2003.

Would amend Corporations Code 25500 to abrogate certain holdings of Kamen v. Lindly and California Amplifier, Inc. v. RLI Insurance Co., two securities fraud cases.

S.B. 917 (Alarcon), introduced February 21, 2003.

Would amend Corporations Code 309 to prohibit a director from performing his/her duties at the expense of the environment, human rights, the public health and safety, the communities in which the corporation operates, or the dignity of the corporation's employees. Suits against the director or the corporation under the bill would only be for liabilities that accrue after January 1, 2017. [That is not a typo!]

Copies of the most recent text of any bill, and the dates of any scheduled hearings, can be obtained at www.leginfo.ca.gov.

Bob Mulford July 30, 2003